United States Department of Labor
Employees' Compensation Appeals Board

D.G., Appellant	)	
and	)	**Docket No. 06-1400**
	)	**Issued: October 10, 2006**
DEPARTMENT OF AGRICULTURE, FOREST SERVICE, Tallahassee, FL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 6, 2006 appellant filed a timely appeal from merit decisions of the Office of Workers' Compensation Programs dated October 3, 2005 and May 1, 2006 denying his traumatic injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has established that he sustained an injury on April 6, 2005 while in the performance of duty.

FACTUAL HISTORY

On April 11, 2005 appellant, then a 44-year-old financial manager, filed a traumatic injury claim alleging that he sustained an aggravation of his preexisting low back pain on April 6, 2005 while in the performance of duty. He stopped work on April 8, 2005 and returned to work on April 11, 2005. By letter dated August 16, 2005, the employing establishment

controverted appellant's claim for continuation of pay, noting that he did not provide any medical documentation.

The record contains evidence establishing that appellant received treatment for back pain prior to April 6, 2005.

By letter dated August 25, 2005, the Office notified appellant that the evidence submitted was insufficient to establish his claim and requested that he submit a detailed medical report explaining how the work incident caused an injury. In a September 1, 2005 response, appellant related that he did not seek treatment on the date of injury. He described a history of increasing back pain after fracturing his back and chipping his spine in a motor vehicle accident. Appellant related that in April 2005 he was responsible for shipping financial records across the country, and that he used three employees to move over 50 boxes to the conference room in preparation for shipping. On April 6, 2005 his supervisor told him to "move the boxes out of the conference room" and, as he did not have any help, he moved the boxes by himself in one hour. Appellant stated, "After I moved the boxes, I notified my supervisor that I had hurt my back and was going home. Since I had back pain many times in the past and since I had seen my doctor just two weeks before, I did not think it was necessary to see my doctor for something I already knew."

By decision dated October 3, 2005, the Office denied appellant's claim on the grounds that he did not establish fact of injury. The Office determined that the claimed box moving incident occurred but that no medical evidence supported that he sustained an injury due to the employment incident.

On October 8, 2005 appellant requested an oral hearing. He submitted a statement dated October 20, 2005 in which he contended that his history of back pain and recent treatment for back pain supported his allegation that moving 50 boxes in a one-hour period aggravated his back pain.

At a telephonic hearing held on February 8, 2006, the Office hearing representative informed appellant that he needed to submit medical evidence supporting his allegations and held the record open 30 days. In a statement dated February 28, 2006, appellant indicated that he was enclosing physical therapy records and a report of a doctor's visit dated January 12, 2006; however, this evidence is not contained in the case record.

In a decision dated May 1, 2006, the Office hearing representative affirmed the October 3, 2005 decision.

LEGAL PRECEDENT

An employee seeking benefits under the Federal Employees' Compensation Act[1] has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an "employee of the United States" within the meaning of the Act; that the claim was filed within the applicable time limitation; that an injury was sustained while in the performance of duty as alleged; and that any disability and/or specific condition for which

[1] 5 U.S.C. §§ 8101-8193.

compensation is claimed are causally related to the employment injury.[2] These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.[3]

To determine whether an employee sustained a traumatic injury in the performance of duty, the Office must determine whether "fact of injury" is established. First, an employee has the burden of demonstrating the occurrence of an injury at the time, place and in the manner alleged, by a preponderance of the reliable, probative and substantial evidence.[4] Second, the employee must submit sufficient evidence, generally only in the form of medical evidence, to establish a causal relationship between the employment incident and the alleged disability and/or condition for which compensation is claimed.[5] An employee may establish that the employment incident occurred as alleged, but fail to show that his or her disability and/or condition relates to the employment incident.[6]

In order to satisfy his burden of proof, an employee must submit a physician's rationalized medical opinion on the issue of whether the employment incident caused the alleged injury.[7] Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the employee's alleged injury and the employment incident.[8] The physician's opinion must be based on a complete factual and medical history of the employee, must be of reasonable certainty and must rationally explain the relationship between the diagnosed injury and the employment incident as alleged by the employee.[9]

ANALYSIS

Appellant alleged that he sustained an injury to his lower back on April 6, 2005 after he moved over 50 boxes during a one-hour period. The Office accepted that the April 6, 2005 incident occurred at the time, place and in the manner alleged. The issue, consequently, is whether the medical evidence establishes that he sustained a compensable injury as a result of the incident.

The Board finds that appellant has not established that the April 6, 2005 employment incident resulted in an injury. The determination of whether an employment incident caused an

[2] *Caroline Thomas*, 51 ECAB 451 (2000); *Elaine Pendleton*, 40 ECAB 1143 (1989).

[3] *See Irene St. John*, 50 ECAB 521 (1999); *Michael E. Smith*, 50 ECAB 313 (1999).

[4] *Delphyne L. Glover*, 51 ECAB 146 (1999).

[5] *Gary J. Watling*, 52 ECAB 278 (2001); *Shirley A. Temple*, 48 ECAB 404, 407 (1997).

[6] *Id.*

[7] *Gary L. Fowler*, 45 ECAB 365, 371 (1994).

[8] *Gary J. Watling*, *supra* note 5.

[9] *See John W. Montoya*, 54 ECAB 306 (2003); *Shirley R. Haywood*, 48 ECAB 404 (1997).

injury is generally established by medical evidence.[10] Appellant maintained that it was apparent that moving over 50 boxes in an hour would aggravate his back pain as he had a history of a back condition for which he had recently received treatment. His lay opinion on the cause of his condition is insufficient to discharge his burden of proof, however, as the Board has held that lay individuals are not competent to render a medical opinion.[11] The belief of a claimant that a condition was caused or aggravated by his or her employment is not sufficient to establish causal relationship.[12] The issue of causal relationship is a medical one and must be resolved by probative medical evidence.[13] Both the Office and the hearing representative advised him of the type of evidence required to establish his claim. He did not, however, provide the Office with any medical evidence. As appellant did not provide the medical evidence necessary to substantiate his claim, he has not met his burden of proof. The Office, therefore, properly denied his claim for compensation.[14]

On appeal appellant contended that it was rationale to believe that he sustained back pain after moving over 50 boxes given his prior back injury and recent medical treatment for back pain. As discussed, however, it is his burden to submit a physician's rationalized medical opinion on the issue of whether he sustained an injury caused by the employment incident.[15]

CONCLUSION

The Board finds that appellant has not established that he sustained an injury on April 6, 2005 in the performance of duty.

[10] *Lois E. Culver (Clair L. Culver)*, 53 ECAB 412 (2002).

[11] *Gloria J. McPherson*, 51 ECAB 441 (2000).

[12] *Luis M. Villanueva*, 54 ECAB 666 (2003); *Robert A. Boyle*, 54 ECAB 381 (2003).

[13] *Luis M. Villanueva*, *id*.

[14] Subsequent to the Office's May 2, 2006 decision, appellant submitted additional evidence. The Board, however, has no jurisdiction to consider this evidence for the first time on appeal; *see* 20 C.F.R. § 501.2(c).

[15] *Gary J. Watling*, *supra* note 5.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated May 1, 2006 and October 3, 2005 are affirmed.

Issued: October 10, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board